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August 1, 2023

VIA ECF

The Honorable Jesse M. Furman
United States District Judge
United States District Court for the
Southern District of New York
40 Centre Street
New York, New York 10007

Re: *UMB Bank, N.A. v. Bristol-Myers Squibb Co.*, No. 21 Civ. 4897 (JMF)

Dear Judge Furman:

Plaintiff UMB Bank, N.A., solely in its capacity as trustee under the Contingent Value Rights Agreement dated November 20, 2019 (“Trustee”), and defendant Bristol-Myers Squibb Co. (“BMS”) write jointly to respectfully request an extension of the fact discovery cut-off date provided in the July 26, 2022 Civil Case Management Plan and Scheduling Order, ECF No. 39 (the “Scheduling Order”) from October 26, 2023 to April 12, 2024 and a corresponding extension of the deadline to complete expert discovery from March 29, 2024 to, August 30, 2024. The parties jointly request this extension to provide the parties time to review voluminous recent document productions by BMS so that they can prepare and conduct the depositions to be taken in this action.

The parties have made substantial progress in discovery. In addition to the voluminous document production efforts, described in more detail below, the parties have exchanged interrogatories and served responses, and each party has served subpoenas requesting documents from a number of third-party witnesses. Both parties have reached substantial completion of their document production, and fourteen separate third parties have produced documents. Despite a number of discovery disputes, in every instance but one, concerning certain interrogatories, the parties have been able to resolve their disagreements without seeking the Court’s intervention. Notwithstanding that progress, however, additional time is needed for the reasons explained below.

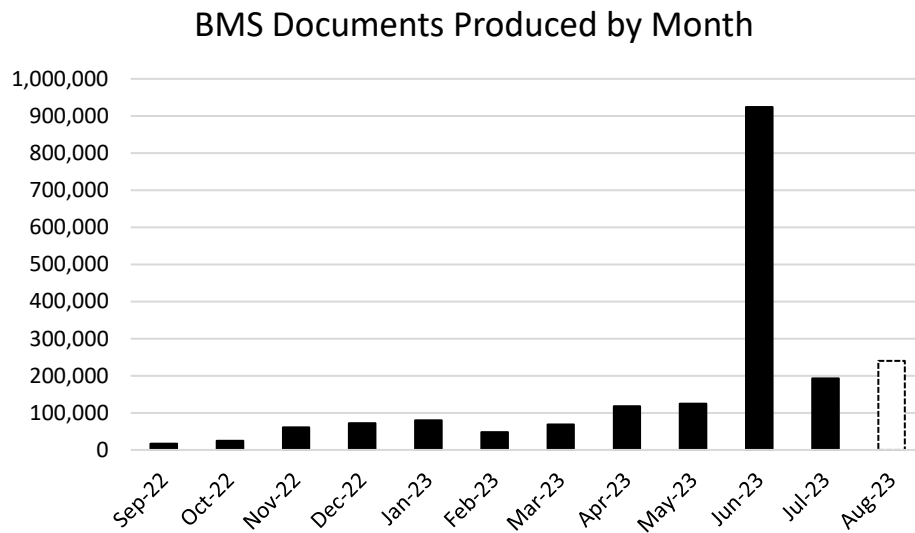
The document collection and review process in this case has been challenging, voluminous, and evolving. Fact discovery started on June 24, 2022, when this Court denied BMS’s motion to dismiss. ECF Nos. 23, 33. The Trustee served two sets of documents requests on BMS, containing 123 separate document requests, with the final set served on July 7, 2022. BMS began rolling document productions on September 1, 2022 (with five additional productions that month) and thereafter made biweekly document production through May 2023. By that time, BMS had produced 614,576 documents (amounting to roughly 5.5 million pages) and the Trustee had conducted ongoing review of these documents.

By early May 2023, BMS stated that it estimated reaching substantial completion by June 30, 2023. Despite the progress made in the course of biweekly productions, by this time, BMS

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still had a large number of potentially responsive documents to be reviewed and produced, due at least in part to recognition by BMS during Q1 2023 that documents from some custodians initially were overlooked in the collection process. In parallel and during the same time period, the parties were discussing the appropriate scope of document review, including discussions about custodians, search terms, and responsiveness determinations. As a result of these factors, BMS adjusted the population of documents identified for review, re-reviewed and re-evaluated certain subsets of data, and took steps to process and review additional data on an expedited basis, including by increasing staffing and resources at multiple junctures.

The number of documents BMS produced each month is depicted below. In total, BMS has produced 1,728,421 documents, amounting to 15,862,406 pages, from the files of 131 custodians and numerous non-custodial sources. As shown below, in June 2023, BMS produced approximately 925,000 documents. Additionally, on July 21, 2023 BMS produced roughly 190,000 documents, and by August 4, 2023 BMS expects to produce approximately 240,000 documents from noncustodial sources and from documents produced in connection with its privilege log.



In parallel, and in preparation for deposition planning, the parties have already conducted a number of discussions about the scope of deposition discovery. They have agreed that the Trustee may exceed the presumptive limit of ten depositions and take up to 25 depositions. BMS currently intends to stay within the ten deposition limit. Accordingly, the parties are currently planning to take roughly 35 depositions in total.

As noted, under the Scheduling Order, the current deadline for the parties to complete fact discovery is October 26, 2023. The parties do not believe they can schedule, prepare for, and complete that number of depositions in the remaining fact discovery period. The Trustee needs time to review and understand the large number of documents it has received from BMS. The parties also will need some lead time to accommodate witnesses' schedules, particularly as a large

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proportion of the anticipated witnesses are not current BMS employees. The year-end holiday period will present an additional scheduling complication. Given all of these factors, the parties believe that more time is needed to complete an orderly and efficient process for the conduct of depositions in this matter.

Thus, the parties jointly and respectfully request that the Court find there is good cause to extend the fact discovery cut-off date until April 12, 2024, and to provide a corresponding extension of the deadline for completion of expert discovery until August 30, 2024.

This is the first request for an extension. The parties next scheduled appearance before the Court is October 26, 2023.

Respectfully submitted,

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